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COMMITTEE ON BANKING, COMMERCE AND INSURANCE
January 31, 2006
LB 917, 1124, 1240

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 31, 2006, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 917, LB 1124, and LB 1240. Senators present: Mick Mines, Chairperson; Pam Redfield, Vice Chairperson; Mike Flood; Jim Jensen; Joel Johnson; Chris Langemeier; LeRoy Loudon; and Rich Pahls. Senators absent: None.

SENATOR MINES: Good afternoon. I was going to wait for others to show up, but to heck with them. Let's start without them. My name is Mick Mines and I am the Chair of the legislative committee and I'd like to...or Chair of the Banking, Commerce and Insurance Committee and I'd like to welcome you to our hearing today. This is your part of the process. This is where we get to hear what you think about proposed legislation, and we look forward to your comments and thoughts. We'll do everything we can to make your time available and help you through that process. Please help us facilitate this meeting, if you would please turn off your cell phones. When you come to testify, please have the testifier's sheet filled out before you come to the table. You'll find those either on the table or by the door to your right. If you have written materials to hand out, our Page will take those from you and distribute them. We need ten copies. When you come to testify, please spell your first and last names. That's for Jan's benefit as well as our transcribers. And we'll take testimony in those wishing to support the bill or proponents; those opponents; and those in a neutral capacity. So I will introduce...let me introduce those of us that are here today. On your left, my right, Senator Jim Jensen from Omaha. Senator Pam Redfield would normally be seated next to Senator Jensen. She will be introducing the first bill. On my left, your right, Senator Mike Flood from Norfolk; and arriving is Senator...I'll let him be seated before I announce him, LeRoy Loudon from Ellsworth, Nebraska. Committee counsel is Bill Marienau on my right; and Jan Foster is our committee clerk. We're going to take the bills in order as posted so...oh, I forgot to announce Joe DiCostanzo. He's our Page today, and Joe hails from Columbus, Nebraska. Are you a Discoverer?

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JOE DiCOSTANZO: That's right.

SENATOR MINES: Discoverer, there you go. With that, let's begin the public hearings with LB 917. Senator Redfield.

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SENATOR REDFIELD: (Exhibits 1 and 2) Thank you, Chairman Mines, members of the committee. For the record, my name is Pam Redfield, R-e-d-f-i-e-l-d. I represent District 12, the "independence" district. I'm here to introduce today LB 917, and it's a bill about security breach. As many of you know, I've been interested in issues of identity theft since I first came here, and it's something I believe the state has made great strides in. But as any area where you are handling sensitive information, we find that technology is sometimes a step ahead of us. And as we work together in businesses and they intertwine their databases, we find that more and more we need to have a statutory remedy for what might be a potential breach of that security. So I do have a handout for the committee, and I want to give you a little bit of background. I chair a committee for the Council of State Governments. It's called Suggested State Legislation. And during this last year, we had approximately 16 bills submitted to us for inclusion in a volume that we publish every year, cutting edge legislation. This is an issue that is facing states across the country, and it is certainly an issue of national interest. The bill that is before you in LB 917 reflects a bill that was passed in Delaware. It is the bill that was actually included in the Council of State Governments volume of suggested state legislation. We felt as a committee from all states that this was the best bill that was submitted to us. Why did we think it was good? Well, first of all, I think uniformity is extremely important because so many of our companies work in multiple states. And clearly it's an issue for them if you have different rules, different dates, different deadlines, different requirements and notices, and it makes it very, very difficult for them. This was the approach that we recommended to the states, and I thought that Nebraska should be part of the solution. And I would encourage that we advance this bill today so that we can also come into this kind of uniformity. The article that I have distributed to you is actually about the federal level. And

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you will see that the FTC actually had fined ChoicePoint over a data breach. Certainly we grieve for the people who are impacted by that breach, but we know that sometimes these things happen and we have to find remedies. There is a federal remedy through the FTC, but there are also companies that only operate within the boundaries of our state. And that is why it's important that we have state legislation that would deal with companies that would not come under the interstate commerce clause. At the same time, we have to be very, very careful that what we do and draft here provides uniformity for the companies that do operate in multiple states. So the elements of LB 917, commercial entities would be required to notify consumers if their personal security information has been breached. But if you look at page 5 of the bill, section 3, you understand that the criteria is very strict. We don't want to force companies to send out a notice and cry wolf every time there is an incident of lost data or data that has been recovered before there is any potential for harm. When we cry wolf, we find out that the consumers no longer pay attention to the notices and, in fact, our efforts to protect them have been thwarted. Section 3 says that an individual or a commercial entity that conducts business in Nebraska and that owns or licenses computerized data that includes personal information about a resident of Nebraska shall, when it becomes aware of a breach in the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be used for an unauthorized purpose. If the investigation determines that the use of information about a Nebraska resident for an unauthorized purpose has occurred or is reasonably likely to occur, the individual or commercial entity shall give notice to the affected Nebraska residents. And the notice shall be made as soon as possible and without unreasonable delay. That's really the guts of the bill. The rest of it is technical, it's definitional, it explains the types of substitute notices we have. They can notify them in writing, by telephone, or by e-mail. The substitute notice can be given if the commercial entity can demonstrate that the cost of providing the notice will exceed \$75,000; that the class of Nebraska residents exceeds 100,000 residents; or that the entity does not have sufficient contact information to provide notice. In that case, we give them an opportunity to substitute the notice. They may use e-mail; they may use

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a conspicuous posting of the notice on the web site of the entity; or they may give notice to major statewide media outlets. Substitute notice can also be given in the case of a small employer who has less than ten employees and demonstrates that the cost to them would be \$10,000 or more, which would be a considerable budget issue for a small company. In that case again, they may use e-mail; they may use notification by paid advertisement in a local newspaper; they could use posting of the notice on a web site; and notification to major media. Now what does personal information include here? What are we talking about? Well, we're talking about their name, but only when their name is used on combination with their Social Security Number, their motor vehicle operator's license number or a state ID card number or an account number of credit or debit card number. So we're talking about a combination. We're not talking about public information that governments hold and it is a matter of public record. We're not talking about information that you might find in a telephone book or a city directory. We are talking about data that would jeopardize you and put you at risk of identity theft and other damage. So the bill is again based off the Delaware House Bill 116. I think it's a good bill. Certainly people across the nation recognized that. There were a number of players in putting together that Delaware bill. And all of the stakeholders, I believe, had a strong hand in putting that together. I am going to keep talking because I'm waiting for an amendment to come down. I actually have one here, but bill drafters had drafted it somewhat incorrectly. They had drafted it as a strike everything in the bill and replace it, and we had asked for an amendment. So I'm very patiently going to have a conversation with you and hope that perhaps you would have questions for me. Thank you.

SENATOR MINES: Thank you, Senator Redfield. Are there questions by the committee? Well, you're going to hang her out to dry.

SENATOR LOUDEN: Yeah, we'll all do what we can to help.

SENATOR MINES: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Mines. Senator Redfield, thank you for bringing the bill. Let's see, section 5, I know that I see somebody from the Attorney

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General's office coming up here...give the Attorney General the ability to bring a suit in law or equity to address violations of section 3 which is in the bill, my question is what do you envision or what is your intent? What do you want the Attorney General's office to do to a company, most likely a foreign company to Nebraska, upon a breach? Specifically, what type of enforcement actions are you looking at?

SENATOR REDFIELD: Well, clearly the Attorney General's office has investigative powers, but the amendment that is coming down will actually give them subpoena power and the ability to recover, as we said here, direct economic damages on behalf of the citizens. So that is going to be included, that language would be included in the amendment that is coming down.

SENATOR FLOOD: So the Attorney General's office would essentially act as the lawyer for the victim and seek restitution or are you looking for the Attorney General's office to civilly penalize and punish a foreign corporation?

SENATOR REDFIELD: No. There are no civil penalties in the bill. There will be no civil penalties in the amendment that Senator Mines, actually, is introducing to the committee, but I'm bringing it to you so that we can discuss it during the hearing. And there will be no civil damages. What we are looking at as the work in the consumer protection division of the AG's office today, functions to protect the citizens of Nebraska.

SENATOR FLOOD: And one more question just so I understand, and I agree with what you're doing, if a resident in Madison County whose credit card number floats out on the Internet thanks to a breach, somebody fraudulently uses that number, charges a bunch of items on the credit card and they end up having to pay for it, for whatever reason, this would give the Attorney General's office the option of going after the violator, you know, or go after the company that had the data and get that 800 bucks from them so they could pay their credit card?

SENATOR REDFIELD: Well, let's go back and talk about the types of incidences we're talking about in the bill with the security breach. We're not talking about you as an

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individual, someone has raided your mailbox and they've gotten your name and your credit card number and they charge something to your account. That's covered under other fraud statutes. If they were to set up an account under your name, a new credit card, that's covered under identity theft statutes. That's a personal injury. What we're talking about here is a company that may have disks, they may have data, whole databases that had been breached. It could have been by a renegade employee. It could have been by an outside hacker who is brilliant and ahead of technology and all of the security that they put in place, and believe me, these companies work overtime trying to put up fire walls and everything else to protect people's data. But we know how difficult it is when you have young people today, sometimes even outside of our borders who are very, very good at overriding systems. So that's the kind of breach we're talking about here in the bill.

SENATOR FLOOD: And I guess I'm just trying to connect the dots from the breach to the harm to the individual. How do you prove damages? Is it one of these thieves acting upon the information that they hijack?

SENATOR REDFIELD: Well, actually, if you look at the article that I passed out, this is actually talking about with ChoicePoint the data was breached. It was multiple accounts that were breached. And as a result of that, there were several people who had their identity stolen and were damaged, economically damaged...

SENATOR FLOOD: And those people...

SENATOR REDFIELD: ...and they were able to recover. And that's what we want to be able to do is make sure we're protecting citizens and the damage would be to them.

SENATOR FLOOD: So the citizen ultimately recovers from the data company that had the information stolen by thieves.

SENATOR REDFIELD: Well, personally I think that should be all of our hope that the person is made whole. But I will tell you the intent of the bill is notification. And that's because when they've had a breach, unless you as a customer know it, you can't take steps to protect yourself. And if your company can notify you that there's been a breach of

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the data, you would then have the opportunity to go to your credit card companies and perhaps put a stop on your account to protect you from that kind of loss. So it's to empower the citizen by notification. That's really what the bill is about originally.

SENATOR FLOOD: Now what if John Q. Public fails to protect themselves after receiving notification and we can prove that he received the notification? Would they be negligent? Would the state or would the data company have a reason to go, you know, allege that they were negligent by not taking proactive steps to protect themselves?

SENATOR REDFIELD: If the company followed the steps in (LB) 917 and they notified the customer and the customer did not protect themselves, we would not be holding them liable.

SENATOR FLOOD: Thank you very much.

SENATOR MINES: Other questions for Senator Redfield?
Senator Louden.

SENATOR LOUDEN: Yeah, Senator Redfield, I haven't had a chance to read this or taken the time to read it, but I'll certainly take your word on whatever you tell me is in here because I can certainly trust you. I guess what I'm...

SENATOR REDFIELD: Wow. Does that apply to all bills?

SENATOR LOUDEN: (Laugh) Yeah, you can hold me to that. I guess what I'm wondering is there a "yeah but" in here and by that I mean if they don't comply with this, what happens to the company if they don't comply with this?

SENATOR REDFIELD: If they don't comply, that's where we're empowering the AG's office. So the AG's action would be against the company that failed to provide the notice when it was clearly indicated.

SENATOR LOUDEN: Okay. There is something...and that's written in here someplace. Is there...I mean, is that what...

SENATOR REDFIELD: That's in section 5.

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SENATOR LOUDEN: ...section 5 is supposed to mean then?

SENATOR REDFIELD: We say the Attorney General may bring an action in law or equity to address violations of section 3. Section 3 is the notice.

SENATOR LOUDEN: Okay, good enough, thank you.

SENATOR REDFIELD: You have the amendment before you and I want to give you a few minutes to read it because you may have some questions about that as well since you wouldn't have had a chance to review it. And I want to give the audience a few moments to review it as well. There were a number of people involved in putting this together. Senator Mines I think was the instigator behind this. And I want to make sure that everyone can have an opportunity in the hearing to react to the information in that amendment.

SENATOR MINES: Senator Jensen.

SENATOR JENSEN: Yes, thank you, Chairman Mines. Senator Redfield, does this apply only to financial data?

SENATOR REDFIELD: No, it would not. Quite honestly, there could be not only credit card data, but there could be...at an insurance company there could be health information that I...

SENATOR JENSEN: We're talking right now and there's a bill in this Legislature this year on medical records, electronic medical records. Would this also be in effect if somehow those records got out to people that should not have them? And, of course, that is a data collection situation.

SENATOR REDFIELD: Right. Now I want to make sure that I don't misrepresent here. The elements that they would...that would be breachable here in the bill is actually on page 4, subsection (4), the personal information. While a health company would have your health data, that's not what we're talking about. We're talking about the Social Security Number which your health insurer would have. We're talking about driver's license numbers or state ID numbers. We're talking about accounts, credit and debit card numbers. So it could be an account number for an insurance company which I don't consider a financial

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information but it's personal.

SENATOR JENSEN: Thank you.

SENATOR MINES: Thank you. I need to mention that Senator Chris Langemeier from Schuyler has joined us as has Senator Joel Johnson from Kearney. Senator Langemeier.

SENATOR LANGEMEIER: Thank you, Chairman Mines. Senator Redfield, can you tell me what the current liability company has that has a breach of information of this type? What is their current liability to the consumer?

SENATOR REDFIELD: Right now the FTC has the power to levy fines and they do in instances where it affects interstate commerce. The FTC, I do not know how involved they would be with a company just at the state level. But I can't really tell you what their liability would be. What I do know is that right now there's no obligation on the part of someone who holds your data to notify you if, in fact, that's been breached and you're at potential for harm.

SENATOR LANGEMEIER: Would this legislation with making the notification mandatory, in any way in your mind, limit the liability?

SENATOR REDFIELD: It would limit the liability in that if they follow the criteria of LB 917 and they notify you so that you can protect yourself, they would not then be liable for breaking this law. We're asking them to notify you and empower you. And if they don't do so, then they would be in violation of this law. But the AG's office is here to testify and I think they would be better qualified to answer questions on what the possible liability is outside of this. I can't answer that.

SENATOR LANGEMEIER: I guess my concern with that is that we're pushing, that we may be pushing a company's due diligence per se to maintain good records and good security walls to keep data secure by allowing them to have an avenue to notify an individual, we've lost your data, sorry, we're off the hook because we've notified you, better call your credit card.

SENATOR REDFIELD: I would tell you without any reservation

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there is no company on the face of this earth that wants the bad publicity of advertising to the public that their data has been breached because they lose their clients. Their clients are concerned about their safety and this is not something that they want to have to ever do. So they will go to great lengths to protect that data so that they never have to mail a notice.

SENATOR LANGEMEIER: Okay, thank you.

SENATOR MINES: Any other questions? Seeing none, thank you, Senator Redfield.

SENATOR REDFIELD: Thank you.

SENATOR MINES: Could I see a show of hands of those wishing to testify in a proponent position? I see one, two, three, four, four. Those opposing the bill? Show your hands. I see none. Those wishing to testify in a neutral capacity? I see none. First proponent, come on forward. Good afternoon.

JEFF GAERTIG: (Exhibit 3) Good afternoon, Chairman Mines and members of the committee. My name is Jeff Gaertig and first name is spelled J-e-f-f, last name spelled G-a-e-r-t-i-g, and I'm an Assistant Attorney General in the consumer protection division of the Nebraska Department of Justice. And I am here in an official capacity of the office of the Attorney General supporting LB 917 and showing our office's favor of the bill in relaying to the committee the office of the Attorney General's support of not only just the bill, but the concepts behind LB 917 and the public policy that is embodied in LB 917. We'd like to take this opportunity to first of all thank Senator Pam Redfield for introducing this very important piece of legislation. Senator Redfield has been out in the forefront in this area of law and she has championed this cause and the cause of guarding against identity theft, and we thank her for her hard work in this area. We'd also like to thank Senator Mick Mines for his continued support and work in this area of law as well. Our office, through the consumer protection division, we investigate, address, and prosecute unfair and deceptive trade acts and practices committed by businesses in the marketplace. And we are also charged with the duty to enforce the state's consumer protection laws, and that's

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why we're here today in support of LB 917. What we are finding when we talk to our colleagues, our other attorneys general in other states, is that there is a growing concern that the breach, the security breach of this personal and private consumer information is happening at an alarming rate. And more and more businesses with the technology advances in our society today, more and more businesses are becoming the custodians of personal and private information of consumers, what are commonly termed identifiers, and what Senator Redfield has identified in her bill. If you follow this area of law and if you see on the news, you'll see that within the past few years there has been monumental security breaches that have compromised the integrity of consumers' private information. These security breaches are occurring at such an alarming rate that they are calculated, they are done by people who know what they want and they know how to use the information they're getting from the consumers. They are breaching security in order to steal identities and to run up fraudulent tabs on people. And one illustrative case study that I've provided to you in a handout and very in front of the public right now is the ChoicePoint, for lack of a better term, fiasco. ChoicePoint was probably one of the worst actors with regards to the breaching of the information that they held in trust with regards to consumer information. Through the security breach of ChoicePoint, there were 800 victims of identity theft. Now these are 800 nationwide that they could...that the Federal Trade Commission could actually track. There's probably more out there that we don't know about. I can't tell you how many Nebraskans were affected by the ChoicePoint breach and how many have had their identity stolen, but one is frankly too many. Once you have your identity stolen, you will fight for the rest of your life to get it back. You will be in constant battle with those who question your sincerity, and your trustworthiness, and your voracity as to I am the person who I say I am. So ChoicePoint, if you have a moment, I won't walk through the ChoicePoint dilemma, but if you have a moment, read the FTC press release. And I've also included a media story as just really showing you the gross and egregious negligence of ChoicePoint with regards to how they let anybody go through their doors, it was like a revolving door, to steal the identities of consumers that they were trusted to hold in faith. There was also, you might be aware of LexisNexis, over 300,000 affected consumers with a breach as to if you were on the LexisNexis

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system, that system was breached. There is Bank of America, there's Visa International. There are bad actors out there, and they are outside of not only the state of Nebraska but they are located in foreign countries, that are, frankly, salivating to get their claws on this information. What LB 917 does from our interpretation, the office interpretation, it's just another tool for us to put in our toolbox in order to fight against identity theft, in order to battle those who attempt to steal the identities of Nebraska consumers. More important than just a tool in the Attorney General's toolbox, more important is LB 917 provides and gives to consumers probably the most powerful weapon available to them when they've been affected by a breach and that is knowledge. This is a notification bill that puts consumers on alert and notice that there may have well been, not only has there may have well been a breach of our security, but your information may well have been compromised. Now what would that do for a consumer? Well, as a consumer, you want to get out in the forefront. You want to start making phone calls to your banks, to your credit card companies, to anything that you think is valuable and that you have a private right of access to. You want to be able to get ahead of the breach because someone out there has your information and it's just probably a matter of time before they use it against you. So really LB 917 is just a weapon provided to consumers to combat this type of identity theft. There are states now moving very fast in this area of legislation passing bills since...within the last two or three years because of ChoicePoint and LexisNexis and the other breaches. There's been approximately 35 states that have introduced legislation and from our last count, I believe, 17 states have passed legislation in this area. And Senator Redfield correctly identified Delaware as being out in the forefront of passing some type of state law in order to protect consumers with regards to the thievery of their identity. There are...we are here in adamant support of LB 917. And we'll work with this committee, and committee counsel, and Senator Redfield's office to move this bill out of committee and so that it can be debated on the Legislature, the full legislative debate on the floor. With that, I will attempt to answer any questions that have been posed and just want to reiterate the office of the Attorney General's support of LB 917.

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SENATOR MINES: Thank you, Jeff. Questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Mines. Mr. Gaertig, your testimony has been excellent today. My question to you is how do you envision this working if we do have a company violating this? What would you hope to accomplish with regard to the enforcement of this and the new section 6 of the amendment as I read it?

JEFF GAERTIG: Thank you, Senator Flood. What we're...I think what we envision as an office is, again, this is all premised on the fact of prosecutorial discretion, this bill is, as I stated, a notification bill. Where our office will become involved and become interested in not only in-state but out-of-state corporations and, frankly, maybe even out-of-country corporations. And there has been, and the term is not in here and I don't want this term to be misinterpreted, but if there's been a gross or egregious failure to notify consumers that there's been a breach and it's so systemic and pervasive, then our office would become involved. So there has to be a certain level...it has to rise to a certain level or threshold of just a, for lack of a better term, just a mass breakdown in the notification that the business will be statutorily required to provide to their customers or clients. Now we based, and we also, by just looking at the amendment that's being proffered by, I believe, either Senator Redfield or Senator Mines, we're in support not only of the underlying green copy of LB 917, we're also in support of the committee amendment. Obviously the more tools you can give us to combat identity theft, we'll take them and we'll use them judiciously and conscientiously. But we do have subpoena power. That's an important tool to be able to subpoena records and find out...where we use the subpoena power is where we want to find out if a company is not a Nebraska corporation or company, if they're operating outside our boundaries, we want to know what are you doing in our state and not only what are you doing, are you violating our laws primarily? And we ask those questions in a fact intensive inquiry so we have the subpoena power. Restitution--that goes to, you know, under the provision of seeking either redress in law or equity. Law is just money, you know, seeking monetary damages, and that would flow directly to the consumers. In this bill, that would be restitution. The restitution would be seeking restitution on behalf of consumers who have

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basically, I think you pointed out example, someone racked up \$5,000 on a credit card. There's an example where we could go to the company that failed to notify their customer or client that because of this the consumer has not only been a victim of possibly identity theft, but they've had funds taken from them in ill-gotten manners. But regarding restitution, there's also equity and more importantly than just getting money, we just don't go out there and...we're not a collection agency. The office of the Attorney General is not a collection agency. We seek injunctive relief. And when you have a bad actor and they're out there doing it and they're doing it consistently, what we do is we seek injunctive relief from a court of law saying basically thou shall not or thou shall. And these are binding orders from the court saying to accompany that as a bad actor or a violator you shall clean up your act. You shall conduct business in the state of Nebraska lawfully and legally. And when a company doesn't follow that order, then they're held in contempt. So conjunctive relief is a powerful tool and weapon that we seek to use when need be.

SENATOR FLOOD: I...you've done a great job and I don't want to make you go on.

JEFF GAERTIG: No, and I'll just turn it over. I don't want to just go on forever. I'll just let it go.

SENATOR FLOOD: You've done a great job, yeah.

JEFF GAERTIG: But you've identified...

SENATOR MINES: Thank you, Senator Flood.

JEFF GAERTIG: ...something regarding causation. It could be a problem, but we can address that.

SENATOR MINES: Any other questions? Jeff, thanks for your testimony, nicely done.

JEFF GAERTIG: Thank you very much. I appreciate the committee's indulgence.

SENATOR MINES: Thank you. Next testifier. Mr. Hallstrom.

ROBERT HALLSTROM: (Exhibit 4) Chairman Mines, members of

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the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in support of LB 917. My testimony goes through some of the requirements that financial institutions and others are subject to so I won't belabor those by reading them in detail. But basically the Gramm-Leach-Bliley Act back in 1999 for the first time set up federal standards regarding safeguarding of nonpublic personal financial information and their personal information for financial institutions and insurance companies in particular. Since 2001 there have been regulatory mandates and dictates pursuant to the interagency guidelines establishing standards for safeguarding customer information that financial institutions have had to abide by. Obviously, banks have quite a bit at stake, perhaps more than any other industry in terms of their desire and the necessity to protect personal information of their customers. As a result, the financial institution industry, not only because of regulations, but because of personal reputational and financial risk have taken great steps and strides in this area. We do have similar, if not more stringent, customer notification requirements to those that are contained within LB 917. As a result, one of the aspects that we're very favorable to in LB 917, in addition to our general support for the bill, is section 4(2) that recognizes that financial institutions and others who are subject to state and federal regulation are required to set up and maintain procedures regarding the safeguarding of customer information, including notification in the case of a data breach. And so we are thankful and grateful that there is a provision in there that recognizes that if we are subject to those requirements, as financial institutions are, that we will not have to have a duplicative notification requirement because of the adoption of LB 917, but can satisfy those requirements by complying with federal regulatory guidelines which, I think, in many cases are perhaps more stringent. I note in my testimony that the notification requirements for financial institutions are governed by our state and federal bank regulators. They conduct on-site examinations. There are penalties and fines for noncompliance with the consumer notification provisions of the federal law. And with that, I would just indicate that we are supportive of the legislation. We have had an opportunity to review your amendments, Senator Mines, and we're supportive of those

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amendments as well.

SENATOR MINES: Thank you. Thanks, Bob. Questions for Mr. Hallstrom? Seeing none, thanks for your testimony. Next testifier, please. Ms. McKenzie, good afternoon.

JAN MCKENZIE: Senator Mines, members of the committee, for the record my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e, representing the Nebraska Insurance Federation, here in support of LB 917. Maybe a little different perspective than from the bankers' point of view, but from our point of view as the insurers drawn into (LB) 917, we are certainly supportive of the bill and the amendment in particular because it helps promote and continue uniformity across the states for our companies who do business in multiple states. We'd also like to thank Senator Redfield and Senator Mines and their staff for their efforts in the last few days to work together to come to some agreement on key particular pieces between (LB) 917 and (LB) 918 that we now see as very favorable in the amendment. With that, I'd answer any questions. Thank you.

SENATOR MINES: Any questions for Ms. McKenzie? Seeing none, thank you. Next testifier in support of the bill. We're glad you're here.

JAIMEE NAPP: (Exhibit 5) Thank you. Thank you, Chairman Mines and members of the committee. For the record, my name is Jaimee Napp, J-a-i-m-e-e, last name N-a-p-p, and I am an identity theft victim from Omaha. My name, birth date, and Social Security Number were stolen and used to apply for four credit cards. The person accused of this crime was a manager and my former employer. It is believed through the police investigation that my information was taken from employee records. I am here in support of this bill in its effort to protect all Nebraskans from the threat of identity theft. Identity theft does not discriminate. No matter what your age, race, religion, educational background or economic status, no one, including the people in this room, is immune to it. Prevention is the key to curbing the number of people who will become victims of identity theft, and this bill is important legislation because it offers an educational opportunity to teach consumers and organizations about the effects of identity theft and their role in preventing it. As a consumer, I am concerned about security

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of the organizations that has all my information, organizations such as my bank, utility companies, insurance company, and employer. If a breach occurs, timing is very, very important to identity theft victims. The sooner they are notified about a theft involving their information, the sooner they can take action to prevent serious damage to their credit. This bill is also important legislation for organizations. Not only will it be used to notify organizations of the responsibility if a breach occurs, but more importantly it will create an opportunity to educate them on how to implement an effective plan and how to avoid a breach. Identity theft is a crime of opportunity and studies have shown the majority of all cases occur in the workplace. If a breach takes place, an organization may receive bad press and possibly be sued in civil action. They could be required to pay damages if the court finds they were negligent and contributed to a breach. And this could have a dramatic effect on an organization's bottom line. In April of 2005, a Michigan judge awarded several employees significant damages for an organization's negligence in contributing to their identities being stolen. I believe that we will see more and more of these cases in the years to come. Again, prevention is the key. I believe a security breach bill could have saved my identity from being stolen. If this bill were already a Nebraska law, my former employer would have been notified and educated about how to prevent a breach. They may have revisited their current security policies and possibly made some changes. I believe that if this occurred, it would have significantly reduced the chances of my information from being stolen. LB 917 is not about penalizing organizations. It is about protecting all Nebraskans. It is about education on how to prepare for and prevent identity theft. Identity theft is an epidemic sweeping our nation and we have the power to make a change. Thank you for this opportunity. Are there any questions?

SENATOR MINES: Thank you, Jaimee, very nicely done. Your first time, isn't it?

JAIMEE NAPP: It is.

SENATOR MINES: You did great. Are there questions for Ms. Napp? Senator Jensen.

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SENATOR JENSEN: Thank you, Senator Mines. Jaimee, thanks for coming forward and telling us your story. Your situation has not been with a data source. Your situation was from an employer that perhaps stopped guarding your personal records correctly.

JAIMEE NAPP: Right. It would have been my personal records, my 1099, my job application, those kinds of things that had my Social Security Number on them. They were paper copies.

SENATOR JENSEN: I wonder if employers know the significance of that, and of course if this bill were to pass, of employee records that are quite often kept in insecure places.

JAIMEE NAPP: Um-hum.

SENATOR JENSEN: Well, thank you for coming forward.

JAIMEE NAPP: Thank you.

SENATOR MINES: Thank you. Any other questions for Ms. Napp? Jaimee, one comment perhaps. In your particular case, and I don't want you to relive everything, but yours was a small employer that was a franchise...

JAIMEE NAPP: Um-hum.

SENATOR MINES: ...so it can happen not only in large companies but even at a small local employer. It is still open...the people that work for him are still open for a security breach. Is that right?

JAIMEE NAPP: Yes. The place where I worked was a franchise housed in Minneapolis, who is their headquarters, and they have different franchises around the Midwest.

SENATOR MINES: All right. So the point is this is a large problem and a small company problem as well.

JAIMEE NAPP: Right. It's not just large Fortune 500 companies. It is smaller companies too.

SENATOR MINES: Great. Well, thank you for your testimony,

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nice to have you here.

JAIMEE NAPP: Thank you.

SENATOR MINES: Thank you. Next testifier in support. In support?

KORBY GILBERTSON: (Laugh) Yes, Senator Mines.

SENATOR MINES: Thank you.

KORBY GILBERTSON: Good afternoon, Chairman Mines, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in support of (LB) 917. LB 917 we think is a good step in promoting uniformity across the nation. We appreciate Senator Redfield's continued attempts at doing things like this in all areas and we appreciate also Senator Mines' willingness to work with us on (LB) 918 last week. I've had a chance to read through the amendment. I have had some preliminary conversations. It appears as though we will support the bill with the amendments also. So with that said, I'd be happy to answer any questions.

SENATOR MINES: Thanks, Korby. Questions for Ms. Gilbertson? Seeing none, thanks.

KORBY GILBERTSON: Thank you.

SENATOR MINES: Thank you for being here. Next testifier. Mr. Ruth.

LARRY RUTH: Senator Mines and members of the Banking Committee, my name is Larry Ruth, spelled R-u-t-h, Larry, L-a-r-r-y, representing First Data Corporation in support of LB 917. First Data Corporation has reviewed the bill as introduced and the proposed amendments and it supports both of those. We compliment Senator Redfield and Senator Mines on moving forward on this important front and ask that it be advanced. I understand it's consistent with laws passed in other states, particularly Delaware, and we think that's very important because First Data Corporation operates in a number of states. Thank you very much.

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SENATOR MINES: Thank you, Larry. Questions for Mr. Ruth? Thank you very much for your testimony. Anyone else wishing to testify in support of the bill? Anyone in opposition? Anyone in a neutral capacity, last chance? Senator Redfield to close.

SENATOR REDFIELD: Thank you very much. I just want to come back and just spend a moment from a practical standpoint of how this actually empowers people. My daughter when she was in college shared a credit card with us. And one time when she was out playing sports, she left it in the car. It was stolen. She got back to the car, she noticed papers had been disturbed and it was missing. She called me immediately to say that the card was stolen. I was able to call the company and inform them so that they could then change our account number. The loss was \$60. In a matter of less than an hour, they had already charged \$60 on it. Now what I want you to know is that the loss on a credit card is generally limited to \$50. So the losses there are very limited. But the loss of your identity is, as correctly described, is infinite in the damage to you. And so what I think are the main advantages of the bill, not only the uniformity, but the notice there, but I think that the incentive for companies. If you look at in the bill we talk about redacted information and in the amendment you see the definitions for both encrypted and redacted data. And what it is, we're saying to companies if you alter or truncate the information, if you encrypt it in such a way that it's not accessible to other people, that is very complicated algorithmic formula in order to access the data, you limit the potential. And so to me not only empowering the citizen by notification, but encouragement of companies to protect their data in those methods, I think that's really what will prevent the future growth of identity theft as companies get wise because I guarantee they will not want the bad PR of knowing that they have not protected your data sufficiently. Thank you.

SENATOR MINES: Thank you, Senator. Questions? Thank you very much. And if you'd come around and assume control, that will close the public hearing on LB 917. And I will open the public hearing on LB 1124.

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LB 1124

LB 1124

SENATOR REDFIELD: Senator Mines, we will now open the hearing on LB 1124.

SENATOR MINES: Thank you, Senator, members of the committee. My name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I'm the principal introducer of LB 1124. LB 1124 would amend sections 45-1024 and (45-) 1026 of the Nebraska Installment Loan Act to provide that in addition to insurance, any other product or service may be provided for the benefit of the borrower or borrower's immediate family whether or not in connection with a loan. Now, that's the brief introduction. I do have a testifier behind me that will give you more information.

SENATOR REDFIELD: Are there questions for Senator Mines? I don't see any. We will hear testimony from proponents.

SENATOR MINES: Thank you.

BRUCE CUTSHALL: (Exhibit 1) Senator Redfield and members of the Banking, Commerce and Insurance Committee. For the record, my name is Bruce Cutshall. That's B-r-u-c-e C-u-t-s-h-a-l-l, and I appear here today as a registered lobbyist for the Nebraska Financial Services Coalition. The coalition is comprised of installment loan and installment sale licensees, i.e. HSBC, Household/Beneficial, Citigroup, Wells Fargo Financial, and American International. Over the years, installment loan and installment sale licensees have financed a number of auto and home security plans with various customers and borrowers. These plans were offered with the knowledge and subsequent to correspondence with the Department of Banking and Finance, and materials were provided to the department that describe such home and auto security plans. And recent conversations with the Department of Banking personnel, it appears that our present statutes would benefit by clarification in this area. Thus, LB 1124 was introduced. Section 2 of LB 1124 which amends 45-1026 was our attempt to clarify that in statute that additional products or services are authorized. However, as a result of conversations and discussions with both personnel from the Department of Banking and the Department of Insurance, it seems preferable to make specific reference to the Motor Club Services Act as the overall governing

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authority for these plans. I have included a proposed amendment that is just that. Unlike your amendment, Senator Redfield, it does strike the entire bill. Section 1 was actually not needed. There was a clarification on the term amount. It had something to the effect of feeder charge, probably provided a little benefit so we obstruct section 1 from the bill and we have amended section 2 that I alluded to earlier, simply to make reference back to this Motor Club Services Act. A copy of this amendment is provided after my testimony there. As you will note, this amendment authorized licensees to provide a motor club service as defined in section 44-3707. I have also included, I think, on the last page of the handout, that particular section. That delineates and enumerates the number of the services that would be under this motor club service. They would include such things as towing, and bail, and arrest bond, emergency road service, travel information, legal services. These are somewhat akin to a AAA Motor Club plan, a number of those were enumerated. The Motor Club Services Act does require a club to obtain from the director of insurance a certificate of authority before they can offer this particular contract. In Nebraska, you would also have to maintain a bond in the amount of \$50,000, or deposit cash, or other securities in such amount, and it requires that a person who is designated by the club to solicit or renew club service contracts would have to be registered with the department. They would have similar oversight, as you would imagine, to look for misrepresentations and fraudulent acts, and noncompliance with statutes and rules and regulations. So, I think that's the oversight mechanism of this particular amendment. I think the amendment clearly delineates the motor club services permitted and the authority by which they are regulated, and I am hopeful, provides the appropriate statutory clarification relative to these plans. I would urge the committee to advance LB 1124 to General File. As I mentioned earlier, we have been doing these for a number of years and I think this clarification is probably needed in order for us to continue with these kind of activities. This concludes my testimony, and I would be open for any questions.

SENATOR REDFIELD: Thank you. Are there questions for Mr. Cutshall? I don't see any. Thank you.

BRUCE CUTSHALL: Thank you.

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LB 1124

SENATOR REDFIELD: Other proponents? Proponents? Opponents? Is there neutral testimony? Yes, please come forward and state your name and spell it for the record.

JOHN MUNN: (Exhibit 2) Vice Chairperson Redfield, members of the Banking, Commerce and Insurance Committee, my name is John Munn spelled J-o-h-n M-u-n-n. I'm the director of the Nebraska Department of Banking and Finance. I'm appearing today in a neutral position with respect to LB 1124 and the amendment that has been proposed by the Nebraska Financial Services Association, in order to provide background information to the committee. LB 1124 with AM 2047 proposes to give installment loan company licensees the authority to finance motor club service contracts sold by licensees under the (Nebraska) Installment Loan Act. The (Nebraska) Installment Loan Act contained in article 45, Chapter 10 of the Nebraska statutes, closely regulates the offer, sale, and financing of nonloan products by an installment loan licensee. A two-tiered system of regulation exists. The first statutory issue, contained in section 45-1011, is whether the other business, which includes the sale of products, is of such a nature that allowing it to be conducted in the same location as an installment loan licensee tends to conceal evasion of the (Nebraska) Installment Loan Act or any rules adopted under it. If the answer to that question is no, and the product is allowed to be sold, then the second question generally arises, can the licensee finance the nonloan product that it is offering. As with many issues under the (Nebraska) Installment Loan Act, the answer was whether specific statutory authority existed for financing. A number of years ago, the department determined that licensees could sell home and auto protection plans without violating section 45-1011. The department also determined at a later date, that such plans could be financed by a licensee, as long as certain conditions were met including the requirement that a licensee could not condition the granting of a loan on the sale of that product. The department's decision, at that time, appears to have been based on the insurance component of the plans. A recent department review of the makeup of current motor club plans, however, has led to a different conclusion. Thus, while these products or plans are now covered under the Motor Club Services Act and subject to regulation by the Nebraska Department of Insurance, they

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contain more elements that are noninsurance than are insurance. As a result, it is the department's opinion that a statutory change to the (Nebraska) Installment Loan Act is necessary to allow the continued financing of these products by the installment loan industry. AM 2047 is a very narrow version of the original LB 1124 and addresses the exact issue described above. For that reason, the department believes that AM 2047 should be substituted for the original bill. Thank you.

SENATOR REDFIELD: Thank you. Are there questions? Yes, Senator Louden.

SENATOR LOUDEN: Thank you for testifying on this. I like the amendment a lot better than the bill; it's several pages shorter (laughter). Is this say, like somebody buying an automobile or something like that, and then part of the reason for buying that automobile, why, the bank then would go ahead and advise them to buy their AAA towing charge and that sort of thing? Is this what this bill is more or less zeroing in on, those types of transactions or?

JOHN MUNN: I can speak to the department's concern. The department's concern is that some of these auto and home protection plans include things like one plan, you can get up to two simple wills prepared a year, you know, kind of unrelated to the insurance nature of buying a car, you know, or a home. Also, trip planning, you know, that's why I made the comment in the testimony about the department's concern is that noninsurance...it is recognized that noninsurance type services are included in these packages.

SENATOR LOUDEN: Okay, thank you.

SENATOR REDFIELD: Senator Jensen.

SENATOR JENSEN: How different is this from what we heard, though, last week, and, again, related to an insurance product sold perhaps by auto dealers? It seems like we are mixing banking and insurance. Hope that everything comes out and recovered by someone out there, but I see a similarity between the two. You know the bill that I was talking about?

JOHN MUNN: No, I do not, Senator. I'm sorry.

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LB 1124, 1240

SENATOR JENSEN: Well, maybe I can visit with Senator Mines on that.

JOHN MUNN: Sorry I couldn't help you.

SENATOR JENSEN: Thank you.

SENATOR REDFIELD: Other questions? Seeing none, thank you very much.

JOHN MUNN: Thank you.

SENATOR REDFIELD: Is there other neutral testimony? Senator Mines, to close. Senator Mines waives closing and that concludes the hearing on LB 1124. Senator Mines to open on LB 1240.

LB 1240

SENATOR MINES: Thank you, Senator Redfield, members of the committee, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I am the principal introducer for LB 1240. It's my great pleasure to introduce LB 1240 because it would enact a new section to provide that the term insurance does not include a waiver of customer liability, which would be defined as a provision in or as an addendum to a customer contract with a public or private provider of utility or communications services, under which the provider agrees to waive all or a portion of the customer's liability on the occurrence or existence of a qualifying condition or an event. Mr. Ruth is behind me to clarify and that concludes my testimony.

SENATOR REDFIELD: Is there a question? I don't see any. Thank you, Senator. Proponents?

LARRY RUTH: Senator Redfield and members of the committee, my name is Larry Ruth. That's spelled R-u-t-h. I'm representing Lock\Line LLC. I appeared last week and before you on a similar bill, LB 929, in a neutral capacity at that time. Today I appear as a proponent of the bill to explain the bill, but then I'm going to be in the very unusual position of suggesting that it be killed so that will put me

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LB 1240

in a strange situation for you all to understand. Lock\Line provides third-party administration of programs for contractual waivers of liability and you did talk about that last week, Senator, and it is kind of confusing. In that regard, it has been having discussions with the Department of Insurance toward the end of last year and beginning of this year as to the regulation of this kind of a product. LB 929 was introduced in early January and it provides for the handling of charges for debt cancellation and debt suspension agreements issued by Nebraska financial institutions. Lock\Line was concerned that the law would be silent as to other providers of such services, giving the inference that only financial institutions are authorized to offer debt cancellation programs. And I testified to that effect in a neutral capacity, as I mentioned. LB 1240 was introduced to respond to that law and that possible negative implication. Since introduction and last week's hearing on LB 929, we've had further discussions with the Department of Insurance, and we are now of the opinion that LB 1240 is not appropriate at this time. We further believe, and this is important, that (LB) 929 is narrowly drawn to speak to the handling of fees when offered in conjunction with installment sales and installment loans and does not go to the authority to offer services. And I think Mr. Hallstrom was pretty explicit on that last year, that the authority comes from the federal level. Accordingly, we do not believe that this bill is necessary at this time, and we would support either holding it or postponing the bill. Thank you.

SENATOR REDFIELD: Thank you. It is very rare for a proponent to ask us to kill a bill.

LARRY RUTH: Well, you know, it's really unusual, Senator, because I didn't know whether I would appear as an opponent or neutral, but I said, now, wait a minute. I suggested to Senator Mines that it would be appropriate to introduce the bill and I think it deserves at least some semblance of support and then perhaps that's enough.

SENATOR REDFIELD: All right. I will think twice when I ask you to support my bills (laughter). Are there any questions (laugh)? Senator Loudon.

LARRY RUTH: I really didn't know how to come in.

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LB 1240

SENATOR LOUDEN: Yeah, okay, that bill, what was it, (LB) 929?

LARRY RUTH: LB 929, Senator.

SENATOR LOUDEN: You think we should...that's the one you'd rather have rather than LB 1240? Is that what you're telling me?

LARRY RUTH: LB 929 really doesn't affect my client. I think that whether that is good falls on its own merits. We certainly have no problems with it.

SENATOR LOUDEN: How come this is a good idea here? Was this a good idea at the time or what was the reason?

LARRY RUTH: Well, this is a pretty difficult area to know what is an insurance product and what is not an insurance product, to follow along what you said, Senator. And I think our first reading was that it went to the authority to offer this kind of a product and that was a legitimate concern. But after we looked at it very carefully and saw that it just went to the handling of fees under the (Nebraska) Installment Loans Act and that particular regime of regulation, that it wasn't as important as we thought it was at first.

SENATOR LOUDEN: I see. One more question. Does this bill have any effect, if any, on mortgage insurance?

LARRY RUTH: Not if it's killed, Senator (laughter).

SENATOR LOUDEN: Did it before?

LARRY RUTH: Actually, I don't think so, no. Mortgage insurance is an insurance product and this is not really mortgage insurance. We're talking about a waiver of contractual liability being given in a contract by a seller of a product to a purchaser and...

SENATOR LOUDEN: Well, if you bought mortgage insurance, isn't that a waiver of liability?

LARRY RUTH: Well, you mean credit life insurance?

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SENATOR LOUDEN: If you...

LARRY RUTH: Yeah.

SENATOR LOUDEN: ...you can buy a ranch, you can buy a car, you can buy anything, you know, and buy mortgage insurance and...

LARRY RUTH: Yeah, you might be thinking...something I might call credit life insurance, something that you take out when you purchase a piece of property and it provides for coverage in the event that you die and that is clearly, it seems to me, insurance, an insurance product.

SENATOR LOUDEN: But it would have no effect on it?

LARRY RUTH: No, this would not have an effect on that.

SENATOR LOUDEN: Okay, thank you.

SENATOR REDFIELD: Thank you. Other questions? Seeing none, thank you.

LARRY RUTH: Thank you.

SENATOR REDFIELD: Are there other proponents? Opponents? Anyone who wishes to testify neutral?

ROBERT HALLSTROM: Senator Redfield, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB 1240. I felt compelled since I was in the audience and Senator Jensen asked the question and we've had quite a bit of discussion about the interplay between LB 1240 and LB 929. I certainly don't want to do any backdoor lobbying here, but I think it is important for the record to straighten out. When we had the hearing on LB 929, awhile back, Senator Langemeier had asked specifically whether or not LB 929 should be held pending the hearing on LB 1240 which was perfectly fine and appropriate under the circumstances. But as Mr. Ruth has indicated, LB 1240 was introduced by the proponents on the assumption that there may have been some negative

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implication if, in fact, LB 929 was introduced for the proposition that it was granting statutorily the authority of financial institutions, state or federally chartered, to issue debt cancellation contracts and debt suspension agreements as something other than insurance. As Mr. Ruth also alluded to and we noted in our testimony last week, that suspension contracts and debt cancellation agreements issued by state and federally chartered banks are not insurance. Thus, we feel the need for LB 929 to clarify the point. I might also add with regard to the department's testimony today on LB 1124, to paraphrase them, I think they indicated that in the essence of what the installment loan licensees are trying to do that are noninsurance products, which would be akin to what debt cancellation contracts and debt suspension agreements are when issued by financial institutions, that they need the statutory authorization to be able to do them since they are not insurance and not otherwise covered under the insurance provisions of the current acts. That was the essence of our bill. If it wasn't clear then, it certainly has become crystallized since that time with the introduction and the hearings of the testimony on these two bills today.

SENATOR REDFIELD: Thank you. Questions? Thank you very much.

ROBERT HALLSTROM: Thank you.

SENATOR REDFIELD: Other neutral testimony? That concludes the hearing on those. Senator Mines. Senator Mines waives closing and that does conclude the hearing on LB 1240.